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NEW WEST ENERGY

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Ray T. Williamson
Acting Director, Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007-2996

July 6, 1998

RE: *Comments on the 1st Draft of Proposed Revisions of the Retail
Electric Competition Rules (R14-2-1601 et seq.)*

Dear Mr. Williamson:


New West Energy ("New West") is a prospective Electric Service Provider in Arizona. New West supports retail electric competition and applauds the Commission's decision to implement competition in Arizona.

The following comments on the proposed revisions of the Retail Electric Competition Rules (the "Rules") reflect the valuable experience that we have obtained as an electric service provider in California. Having already participated in retail electric competition, we are confident that full competition can work in Arizona as well. Accordingly, we urge the Commission to promote full competition in the Rules. The Commission should remove from the draft Rules all provisions that will tend to hinder or delay the transition to a market-driven retail electric industry. Such transition should occur boldly and rapidly, without intrusive or burdensome regulatory procedures that will impede the ability of the industry to function at its full competitive capacity.

We understand that these rules are a first draft and that further comment will be permitted. In this regard New West Energy will continue to develop concepts, both for the rules and working groups, so that Arizona will be attractive to energy providers and so that we might avoid some of the problems which have occurred in California.

We appreciate the opportunity to comment of the proposed revisions to the Rules and look forward to participating in the process of developing a pro-competitive transition to retail electric competition.

Sincerely,

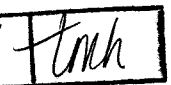

Karen Caldwell for Karen Caldwell
Managing Director

Arizona Corporation Commission

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JUL 06 1998

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NEW WEST ENERGY

Comments to Proposed Rule Changes

*In these comments, suggested changes to the text of the Rules are indicated in **bold**. Additional language is added to the text in **bold** without any further notation. Deleted language is shown in bold and with ~~strike~~through. Provisions to which we have no suggested changes to the language are not reproduced.*

R14-2-1601. Definitions

Suggested Change to subsection (13):

- (13) "ESP Service Agreement" means a ~~contract between an ESP and UDC to deliver power to retail end users~~ **Commission-approved agreement between an Affected Utility or a Utility Distribution Company and an Electric Service Provider. An ESP Service Agreement shall be a standardized agreement specific to each Affected Utility or UDC. It shall set forth the terms and conditions of competitive services to be provided by the Electric Service Provider in the service territory of the Affected Utility or the Utility Distribution Company. At a minimum, the agreement shall include provisions related to Electronic Data Interchange, Meter Reading Service, Metering Service, and compliance with the Scheduling Coordinator.**

Comment

Based on its experience in California, New West believes that limited regulatory involvement in market entry is sufficient and encourages competition. Standardized, Commission-approved agreements between ESP's and Affected Utilities or UDCs is the most efficient mechanism for controlling the technical and financial viability of competitors.

Accordingly, as we set forth in our comments below, the Commission should issue statewide Certificates of Convenience and Necessity ("CCN"). Having obtained a statewide CCN, an ESP would then enter into an ESP Service Agreement, which agreement would establish the terms and conditions for competition in the service area of the Affected Utility or UDC. We are attaching a sample ESP service agreement as a general example.

R14-2-1603. Certificates of Convenience and Necessity.

Suggested Change to subsection (A):

- (A) Any Electric Service Provider intending to supply services described in

R14-2-1605 or R14-2-1606, other than services subject to federal jurisdiction, shall obtain a **statewide** Certificate of Convenience and Necessity from the Commission pursuant to this Article; however, a Certificate is not required to offer information services or billing and collection services, ~~or self-aggregation.~~

Comment

In the last line of this subsection, we strike the words "or self-aggregation" to reflect our understanding that the Commission does not intend to require any aggregators to obtain CCNs. If aggregators in general do not require CCNs, then the smaller set of self-aggregators are exempted by definition. As this subsection is currently drafted, however, it creates confusion because it implies that aggregators that are not self-aggregators require a CCN. (*The same comment applies to R14-2-1605(B).*)

In line three (3), we insert the word "statewide" to reflect our position that Certificates of Convenience and Necessity should be issued for the entire State of Arizona. ESPs should not be required to file redundant applications for a CCN in order to compete in Arizona. The Rules currently require, however, that each ESP apply for a separate CCN for each geographic area in which it desires to compete. A single statewide certificate will reduce administration and encourage market entry.

The certification process should be as simple as possible, consistent with the Commission's constitutional and statutory obligations. Accordingly, as we develop more fully in later comments, the Rules should establish clearly defined standards for acceptance or denial of a certificate. The informational requirements should be minimal and should assure that the Affected Utilities do not receive any competitive advantage created by the application process. Finally, once an ESP obtains a certificate, it must then enter into an ESP Service Agreement with an Affected Utility or a UDC before it can begin actual competition in the service area of such Affected Utility or UDC. The ESP Service Agreements, not the CCN applications, should establish and guarantee the technical and financial ability of an ESP to compete.

Suggested Change to subsection (B):

- (B) Any company desiring such a **statewide** Certificate of Convenience and Necessity shall file with the Docket Control Center the required number of copies of an application. ~~Such Certificates shall be restricted to geographical areas served by Affected Utilities as of the date this Article is adopted and to serve areas added under the provisions of R14-2-1611(B).~~ In support of the request for a Certificate of Convenience and Necessity, the following information must be provided:

1. A description of the electric services which the applicant intends to offer;

2. The proper name and address of the applicant, and
 - a. The full name of the owner if a sole proprietorship,
 - b. The full name of each partner if a partnership,
 - c. A full list of officers and directors if a corporation, or
 - d. A full list of the members if a limited liability corporation; and
3. A tariff for each service to be provided that states the **maximum rate and** terms and conditions that will apply to the provision of the service;
- ~~4. A description of the applicant's technical ability to obtain and deliver electricity and provide any other proposed services;~~
- ~~5. Documentation of the financial capability of the applicant to provide the proposed services, including the most recent income statement and balance sheet, the most recent projected income statement, and other pertinent financial information. Audited information shall be provided if available;~~
6. A description of the form of ownership (e.g., partnership, corporation);
- ~~7. Such other information as the Commission or Staff may request.~~

Comment

Since the Commission will be certifying Electric Service Providers statewide, and not just in the distribution service territories of public service corporations, authority to compete in Arizona should extend to all electrical distribution systems in the state.

The CCN application should be analogous to a license application. The Commission needs only such information as is necessary for it to contact the ESP, to monitor competition in Arizona, and to fulfill its constitutional mandates relative to rate-setting. Any further requirements might cause needless delay and expense to potential competitors.

Moreover, as we emphasize below in our comment to R14-2-1603(D), it is problematic to require disclosure of any information that could become available to Affected Utilities, particularly proprietary financial and technical information.

We point out that the provision on maximum rates is problematic. We recognize the constitutional reason for the floor and ceiling. But, certain pricing agreements might cause rates to fluctuate dramatically according to market prices. (Consider the recent hourly prices in certain

Midwest markets). Unless the maximum could be set at a very high rate, this provision will discourage innovative pricing agreements. We do not have a specific proposal on this point, but suggest that some flexible or averaging system be established to meet the constitutional requirements yet provide the necessary pricing flexibility.

If the Commission retains some or all of the requirements of this subsection, however, the requirements as currently drafted are vague. Such terms as "technical capability", "financial capability", and "other information" should be clearly and specifically defined in order to provide potential ESPs with predictable and understandable criteria for market entry in Arizona.

Comment to subsection (D):

It is not necessary to require a potential market entrant to serve information on a future competitor. This is especially true where information is such that it could be used by the competitor to prepare its competitive strategy, including rate variations and incentives, before the new entrant has obtained the necessary legal authority to compete.

Comment to subsection (E):

The provision is unnecessary would add a further obstacle to market entry by some ESPs and would deter some such entrants from competing in Arizona. Necessary security provisions can be efficiently achieved through ESP Service Agreements.

Suggested Change to subsection (F):

(F) The Commission may deny certification to any applicant who:

1. Does not provide the information required by this Article;

~~2. Does not possess adequate technical or financial capabilities to provide the proposed services;~~

3. Does not have ~~service acquisition agreements~~ an ESP Service Agreement with a ~~u~~Utility ~~d~~Distribution ~~e~~Company and ~~s~~Scheduling ~~e~~Coordinator, if the applicant is not its own ~~s~~Scheduling ~~e~~Coordinator;

~~4. Fails to provide a performance bond, if required;~~

~~5. Fails to demonstrate that its certification will serve in the public interest.~~

3. Fails to pay Transaction Privilege Taxes on Retail Business in Arizona

Comment

Item 2 should be deleted because the technical and financial capabilities of an ESP can be controlled through the ESP Service Agreements.

Item 3 should be edited to correspond to the defined terms in the Rules.

Item 4: The performance bond should not be a precondition to certification. We develop this concept in our comment to R14-2-1603(H).

Item 5 is not necessary. HB 2663 provides that "[i]t is the public policy of this state that a competitive market shall exist in the sale of electric generation service." (A.R.S. § 40-202(B).) Therefore, an ESP's participation in the competitive market is now in the public interest by legislative fiat. Accordingly, the ESP should not be required to make such a demonstration to the Commission.

Suggested Changes to subsection (G):

(G) Every Electric Service Provider obtaining a Certificate of Convenience and Necessity under this Article shall obtain certification subject to the following conditions:

1. The Electric Service Provider shall comply with all Commission rules, orders, and other requirements relevant to the provision of electric service ~~and relevant to resource planning~~;

Comment

Resource planning is an undefined term that does not provide adequate notice of the requirements for remaining certificated in Arizona. Resource planning is more of a regional phenomenon in a competitive market. The market should and will control resource planning.

Comment to subparagraph (G)(2):

This subparagraph should be deleted as unnecessary. The disclosure of information by an ESP is unnecessary and might lead to creating competitive advantages and disadvantages.

Comment to subparagraph (G)(3):

Same comment as for subsection (G)(2) above.

Suggested Change to subparagraph (G)(4):

4. The Electric Service Provider shall maintain on file with the

Commission all current tariffs ~~and any service standards~~ that the Commission ~~shall~~ may require;

Comment

"Service standards" is an undefined term that does not provide adequate notice of the requirements for remaining certificated in Arizona.

Comment to subparagraph (G)(6):

This subparagraph should be deleted. State-law permit and license requirements will be regulated by the entities issuing the licenses or permits.

Comment to subsection (H):

This subsection should be deleted. A performance bond or escrow requirement should not be a precondition to certification because, before the ESP commences to do business in the state, the amount of the bond or to be held in escrow can only be based on estimations. An ESP should be required to post a performance bond or to hold funds in escrow that are sufficient to cover advances or deposits from its customers, but this requirement should initiate after certification and should reflect the actual amount of deposits.

R14-2-1604. Competitive Phases.

Suggested Change to subsection (B):

- (B) Groups of Affected Utility customers with individual peak load demands of 40 kW or greater aggregated into a combined load of 1 MW or greater will be eligible for competitive services ~~no later than~~ beginning January 1, 1999. If peak load demand data are not available, the 40 kW criterion ~~can be determined to~~ will be met if the customer's usage exceeded 16,500 kWh in any month within the last twelve consecutive months. ~~From January 1, 1999, through December 31, 2000, aggregation of new competitive customers will be allowed until such time as 20% of the Affected Utility's 1995 system peak demand is served by competitors. At that point all additional aggregated customers must wait until January 1, 2001, to obtain competitive service.~~

Comment

Generally, subsections (A) and (B) provide inadequate information concerning the mechanics of customer selection. For example, it is not clear how an Affected Utility will determine when it can aggregate loads. Further, the word "customer" is undefined. The rule should clarify whether a "customer" refers to a single meter or to an entity with more than one meter.

Moreover, the rule should clarify whether, if a single site is over 1 MW, all lesser sites for the same entity also become eligible for competition.

With respect to the current draft of subsection (B), until December 31, 2000, if the total of eligible customers under subsection (A), plus the eligible customers under (B), reaches 20% of the Affected Utility's 1995 system peak demand, then no further aggregation is possible until January 1, 2001. Additional customers, however, can become eligible for competition under subsection (A). This provision favors large ESPs who can provide incentives for aggregation at the earliest possible date. Moreover, it unnecessarily penalizes small customers who might not be prepared to aggregate in the early phases of competition. Therefore, the last two sentences of the subsection should be deleted, and the rule should provide that aggregation is available to combined loads of more than 1 MW beginning no later than January 1, 1999.

Comment on subsection (H):

This subsection should be deleted. The provision as currently drafted allows a UDC to bypass the affiliate rules and gain an unfair competitive advantage. An out-of-state ESP could also use this provision to compete in Arizona without fulfilling the certification or ESP Service Agreement requirements.

R14-2-1605. Competitive Services.

Comment:

We reiterate our comment to R14-2-1603(A) concerning self-aggregation.

R14-2-1606. Services Required to Be Made Available by Affected Utilities.

Comment:

This section applies only to Affected Utilities. Accordingly, references to ESPs should be changed to refer to Affected Utilities.

Comment to subsection (A):

The Standard Offer provisions should be reconsidered so as to not give a competitive advantage to the utility providing the standard offer.

Comment to Subparagraph (A)(1):

The Rules do not contain a supplier of last resort provision. The Rules should specify that the UDC is the supplier of last resort for load under 100,000 kW per year. Moreover, subparagraph (A)(1) should clarify that the discontinuation of Standard Offer tariffs does not affect a UDC's supplier of last resort obligation.

Comment to subsection (B):

Notwithstanding subsection (A), this provision implies that the Standard Offer will continue after January 1, 2001. Does the Commission intend that Standard Offer will transfer to UDCs from Affected Utilities after January 1, 2001? If so, does subsection (B) apply only to Standard Offers that have not been discontinued under subsection (A)?

Comment to subsection (F):

This provision should be deleted. It would permit the lowest bidding ESP to capture the entire Standard Offer load of a UDC. The provision encourages predatory pricing and potential statewide monopoly.

Comment to subparagraph (J)(3):

It has become impossible to submit a report within 60 days of December 31, 1997, the date indicated in R14-2-1602.

R14-2-1609. Solar Portfolio Standard.

Comment:

This section should be reconsidered so that it does not discourage market entry by smaller ESP's, especially ESP's purchasing their requirements from a power exchange.

The section's appears to assume that all ESPs are generators. In fact, ESPs that are not generators cannot easily comply with this provision because they will generally purchase power from commingled sources and will have no reliable mechanism for determining the origin of their purchased power. Moreover, they could not enter into long-term contracts because they could not predict the cost, or the availability, of eligible power.

Especially in the context of a newly deregulated market, where predictability is difficult, this provision will deter potential power marketers and other non-generating ESPs from competing in Arizona.

We suggest that the Commission consider different mechanisms to encourage the development of renewable resources.

R14-2-1610. Transmission and Distribution Access.

The Commission should be careful to assure no conflict with FERC jurisdiction.

R14-2-1611. Reciprocity.

Comment:

This section should be deleted in its entirety. A system of statewide CCNs and standardized, Commission-approved ESP Service Agreements renders these reciprocity provisions unnecessary.

R14-2-1612. Rates.

Comment to subsection (B):

We reiterate our comment to R14-1-1603(B)(3) with respect to the requirement to file maximum rates. In addition, this provision does not establish any time limitations for the Commission to approve such rates. To give predictability, such rates should be deemed approved unless the Commission disallows them within an established period of time. The rule should also set the criteria for Commission review and approval of such rates.

Comment to subsections (C) and (J):

These provisions should be deleted. Any requirement to approve customer agreements is unnecessary and could disclose information to competitors. If review is required, the rules should establish strict time limitations for such review, and contracts should be presumptively valid unless disapproved within the established time period and under clear criteria.

Comment to subsection (K):

This provision should be deleted. There is no competitive need to set minimum prices. If the Commission's concern is predatory prices, antitrust law already governs and controls such practices. Occasional below cost pricing, however, may be justifiable under sound business principles. Market conditions, for example, could require occasional short-term sales below marginal cost.

In addition, the provision does not define "marginal cost." Indeed, it would be difficult to arrive at a meaningful definition. For example, the term is essentially meaningless for brokers, whose marginal cost is essentially the market rate.

Finally, this provision does not specify the consequences of a sale below marginal cost. Does the Commission intend to force ESPs to default on their contracts if there is a below-cost sale?

Comment to subsection (L):

This subsection should be deleted. No filing of maximum rates should be required. Accordingly, no filing for *changes* to maximum rates should be necessary. If the Commission does

require such a filing, however, the filed rates should be presumptively valid unless rejected within an established time period and under clear criteria.

R14-2-1613. Service Quality, Consumer Protection, Safety, and Billing Requirements.

Comment to subsection (A):

Our comments to section R14-2-210, below, demonstrate our belief that substantial portions of this section should not apply to ESPs.

Comment to subsection (D):

This section should be redrafted to clarify that compliance with applicable reliability standards is the responsibility of the scheduling coordinator, the ISO or the ISA, and notification of scheduled outages is the responsibility of the UDC. This section should not apply to other ESPs.

Suggested Change to subsection (E):

- (E) Each Electric Service Provider shall provide at least 30 days notice to all of its affected customers **of its intent to cease providing** ~~if it is no longer obtaining~~ generation, transmission, distribution, or ancillary services ~~necessitating that the consumer obtain service from another supplier of generation, transmission, distribution, or ancillary services.~~

Comment

The suggested change is intended to clarify and simplify this provision.

Comment to subsections (F) and (G):

These provisions should apply only to UDCs.

Comment to subsection (H):

ESPs should not be required to have toll-free numbers. The UDC number should be listed for safety inquiries. There is no need to refer safety inquiries to ESPs that are not UDCs.

Comment to subsection (I):

The provisions of this subsection are overly technical. Rules of this nature may need to be adjusted after competition begins to accommodate for the realities of competition. The Commission's rule-making procedures would preclude the possibility of implementing changes to these rules in a timely fashion.

If the rules are included, the current draft contains numerous terms that are not defined and therefore do not provide adequate notice of their requirements.

Comment to Subparagraph (1):

An ESP should be required to provide information to Affected Utilities, UDCs, Scheduling Coordinators, and the ISO/ISA in order to facilitate system reliability. No other information exchange requirements should be imposed by rule. The market will impose such requirements through metering or meter reading agreements.

Suggested change to subparagraph (1)(2):

- (2) ~~A consumer or an Electric Service Provider~~ Any person relying on metering information provided by ~~another an~~ Electric Service Provider may request a meter test according to the tariff on file ~~and approved~~ by the Commission. However, if the meter is found to be in error ~~by more than 3% in excess of Commission-approved standards~~, no meter testing fee will be charged.

Comment

The category of persons that can request a meter test should be expanded to include any person relying on metering information. The Commission should not approve tariffs for meter testing. Rather than establishing a set percentage of error, the rule should refer to a Commission-approved standard. This will enable changes to the standard without amending the rule.

Comment to Subparagraph (3):

The reference to R14-2-1606(I) should be to R14-2-1606(J).

Suggested Change and Comment to Subparagraph (5):

The UIG should be required to complete its standards at least 60 days before the onset of competition. If the standards are not completed in a timely fashion, the rule should establish interim standards. In the penultimate line, "can" should be changed to "shall".

Suggested Change and Comment to Subparagraph (6):

The second sentence should be changed as follows: "This data will be **securely** transferred via the Internet ~~using a secure sockets layer~~." This change will preserve the security requirement but will permit other forms of security than a secure sockets layer.

Comment to Subparagraph (10):

The term "control" is overbroad unless it is defined. Moreover, the role of the MRSP is unclear in this provision. Does the Commission intend the MRSP to be a representative of the ESP?

Comment to Subparagraph (11)-(16):

As stated above, these subparagraphs contain undefined terms and are overly technical for the rules.

Comment to subsection (M):

If an ESP is mandated to provide the listed information on their billing statements, then Affected Utilities and UDCs should be mandated to provide such information that is in their control to the ESP in order to permit the ESP to meet its requirements.

R14-2-1614. Reporting Requirements.

Comment:

This entire section should be deleted. The reporting requirements are unnecessary and will impose additional costs on the market.

R14-2-1615. Administrative Requirements.

Comment to subsection (A):

We reiterate our comments on maximum rates. In addition, if such a filing is required, the filed rate should be presumed valid unless the Commission disapproves it within an established period of time and under clear and defined criteria.

Comment to subsection (B):

We reiterate that there should be no requirement to file contracts because of confidentiality and the burden on competition.

Comment to subsection (C):

The simplification of the Rules that we are proposing herein obviates the need for any exemptions or variations.

R14-2-1617. Electric Affiliate Transaction Rules.

No comments.

R14-2-1618. Information Disclosure Label.

Comment:

This section should be deleted in its entirety. It is unlikely to assist customers in making a reasoned choice of electricity suppliers.

R14-2-210. Billing and Collection.

Comment:

In general, these provisions are overly technical and should not be included in the Rules. Despite their technicality, however, the section fails to clarify a significant issue: who has the right to bill a customer?

Comment to subsection (A):

Comment to subparagraph (A)(2):

The terms "utility" and "customer" are not defined.

Comment to subparagraphs (A)(3)-(16):

As stated above, the rules for estimated meter reading should be developed by the working group and should not be included in these rules.

Comment to subparagraph (B)(2)(i):

The term "LDC" is not defined.

Comment to subsections (C)-(I):

These provisions should be deleted in their entirety. They do not apply to ESPs, and to the extent they apply to UDCs, they should be covered by the UDC's tariffs.

Ray T. Williamson
Acting Director, Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007-2996

July 6, 1998

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Managing Director